

STATE OF MICHIGAN
COURT OF APPEALS

REMY CHANDLER INTERCOUNTY DRAIN
DRAINAGE DISTRICT,

UNPUBLISHED
April 30, 2009

Plaintiff-Appellee,

v

LAND ONE, LLC, EASTWOOD, LLC, LL &
127, LLC, and MICHAEL EYDE,

No. 283525
Ingham Circuit Court
LC No. 05-000172-CZ

Defendants-Appellants.

Before: Wilder, P.J., and Meter and Servitto, JJ.

MEMORANDUM.

Defendants appeal as of right from the trial court's order granting plaintiff's motion for costs, among other relief. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendants argue that the trial court erred in awarding sanctions against defendants for filing a frivolous pleading. More specifically, defendants assert that the trial court's conclusion that their pleaded affirmative defenses were frivolous, was clearly erroneous given the statutory definition of "frivolous." MCR 2.625(A)(2) allows a sanction only "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591, in turn, states in relevant part:

(3) As used in this section:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

We review a trial court's finding that a pleading is frivolous for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id* at 662.

The trial court ordered sanctions against defendants on the basis that their defense, that the easements at issue in this matter were invalid, was frivolous as devoid of legal merit because not only was this position inconsistent with positions defendant had expressly asserted in other litigation, but, in fact, defendants has also benefited from express reliance on the validity of these same easements. Under the deferential standard of review that we apply to the trial court's findings, we are not left with a firm belief that a mistake was made.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto